

STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

CRANSTON, RITT

RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND

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:
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v.

**C.A. No. T18-0021
18411501761**

CHRISTOPHER HOOK

DECISION

PER CURIAM: Before this Panel on January 30, 2018—Chief Magistrate DiSandro (Chair), Associate Judge Almeida, and Magistrate Noonan, sitting—is Christopher Hook’s (Appellant) appeal from a decision of Magistrate Alan R. Goulart (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 31-14-2, “Prima facie limits.” The Appellant appeared before this Panel represented by counsel. Jurisdiction is pursuant to § 31-41.1-8.

I

Facts and Travel

On July 15, 2018, Officer Scott Hopkins (Officer Hopkins) of the Smithfield Police Department observed a vehicle travelling sixty miles per hour in a forty miles per hour speed zone. (Tr. at 3:20-4:2.) Officer Hopkins identified the driver of the vehicle as Appellant, and issued Appellant a citation for the above-mentioned violation. *Id.* at 4:6-9; *see* Summons No. 18411501761.

The Appellant subsequently pled not guilty to the charged violation, and the matter proceeded to trial on October 15, 2018. (Tr. at 1:1.) At trial, Officer Hopkins testified that on July 15, 2018, he was travelling southbound on Douglas Pike when he “observed a vehicle

traveling at a high rate of speed coming northbound in the left travel lane.” *Id.* at 3:20-24. Officer Hopkins stated that the area in which the vehicle was travelling was a posted forty miles per hour zone, and Officer Hopkins’ moving radar unit registered the speed of the vehicle at sixty miles per hour. *Id.* at 3:24-4:2. At that point, Officer Hopkins “turned around and stopped the vehicle[,]” and issued Appellant a citation for violating § 31-14-2. *Id.* at 4:6-10. Officer Hopkins also testified that after Appellant received the ticket, Appellant stated that “he had the cruise control set to 55 because he thought that the speed limit was 45.” *Id.* at 4:9-12.

Officer Hopkins testified further about his training and experience using a moving radar unit, stating that “[he] was trained in the use of radar at the Rhode Island Municipal Police Academy in 2002.” *Id.* at 4:2-4. Moreover, he noted that the “unit was calibrated internally and externally prior to and after the stop and found to be in good working order.” *Id.* at 4:4-6.

At the conclusion of trial, the Trial Magistrate found Officer Hopkins testimony “completely credible” and adopted that testimony as his findings of fact. *Id.* at 5:13-14. Furthermore, the Trial Magistrate was “satisfied based on the officer’s testimony that he knows how to use the radar and the radar device was in fact working properly.” *Id.* at 6:15-17. As such, the Trial Magistrate sustained the charged violation. *Id.* at 6:17-19. In imposing a sentence, the Trial Magistrate noted that Appellant is “a Colin Foote violator[,]” and therefore suspended Appellant’s license for four months. *Id.* at 7:7-11.

II

Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate of the Rhode Island Traffic Tribunal. Section 31-41.1-8(f) provides in pertinent part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge’s findings, inferences, conclusions or decisions are:

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the judge or magistrate;
- “(3) Made upon unlawful procedure;
- “(4) Affected by other error of law;
- “(5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- “(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mut. Ins. Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the Appeals Panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Envtl. Sci. Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the Appeals Panel determines that the decision is clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record or is affected by error of law, it may remand, reverse, or modify the decision.” *Id.* Otherwise, it must affirm the hearing judge’s (or magistrate’s) conclusions on appeal. *See Janes*, 586 A.2d at 537.

III

Analysis

On appeal, Appellant asserts that the Trial Magistrate's decision is "[a]ffected by . . . error of law" and "[c]learly erroneous in view of the reliable, probative, and substantial evidence on the whole record." Sec. 31-41.1-8(4)-(5). Specifically, Appellant challenges the accuracy of the speed registered by the radar unit. *See* Appellant's Notice of Appeal, at 2.

In order for a radar unit reading to be admissible at trial, the testifying officer must satisfy two preliminary requirements: "the operational efficiency of the radar unit was tested within a reasonable time by an appropriate method," and (2) "testimony setting forth [the officer's] training and experience in the use of a radar unit." *State v. Sprague*, 113 R.I. 351, 355-357, 322 A.2d 36, 39-40 (1974). Moreover, "radar speed meter readings are admissible without a prior showing of the reliability of the [device] that was used to test the accuracy of the radar unit." *Id.* at 357, 40.

At trial, Officer Hopkins testified to the "operational efficiency" of the radar unit that he used to determine the speed of Appellant's vehicle. (Tr. at 4:1-6.) It is clear that the moving radar unit was "tested within a reasonable time and by an appropriate method" as Officer Hopkins stated that he calibrated the moving radar unit "internally and externally prior to and after the stop[,]" and determined that it was "in good working order." *Id.* at 355-357, 39-40; (Tr. at 4:4-6). Officer Hopkins also stated that he was "trained in the use of radar at the Rhode Island Municipal Police Academy[,]" which satisfies the second prong of the *Sprague* analysis. (Tr. at 4:2-4); *Sprague*, 113 R.I. at 355-57, 322 A.2d at 39-40.

Furthermore, Officer Hopkins' undisputed testimony reveals that Appellant admitted during the stop that he knew he was travelling over the speed limit as "he had the cruise control

set to 55 because he thought that the speed limit was 45.” (Tr. at 4:9-12). Indeed, a trial judge or magistrate “may not arbitrarily disregard uncontradicted testimony” unless such testimony “contains inherent improbabilities or contradictions . . . [or] may also be disregarded on credibility grounds as long as the factfinder clearly but briefly states the reasons for rejecting the witness’ testimony.” *Norton v. Courtemanche*, 796 A.2d 925, 932 (R.I. 2002) (quoting *Lombardo v. Atkinson–Kiewit*, 746 A.2d 679, 688 (R.I. 2000)). Here, the Trial Magistrate’s acceptance of Officer Hopkins’ entire testimony at trial—including Appellant’s admission—is not clearly wrong as the record is devoid of any evidence indicating that Officer Hopkins’ testimony contained “inherent improbabilities or contradictions.” *See id.*; Tr. at 5:13-14.

Moreover, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge concerning the weight of the evidence on questions of fact.” *Link*, 633 A.2d at 1348 (citing *Janes*, 586 A.2d at 537). As the members of this Panel did not have an opportunity to observe the live testimony of Officer Hopkins, it would be impermissible to second-guess the Trial Magistrate’s impression as he was able to “appraise [the] witness[’s] demeanor and to take into account other realities that cannot be grasped from a reading of a cold record.” *A. Salvati Masonry Inc. v. Andreozzi*, 151 A.3d 745, 749 (R.I. 2017) (internal quotations omitted).

In light of Officer Hopkins’ testimony—which the Trial Magistrate found “completely credible”—as to the operational efficiency of the radar unit, and that he had training and experience using a radar unit, this Panel finds that the Trial Magistrate properly determined that Officer Hopkins’ testimony met both prongs of the *Sprague* analysis. *See* Tr. at 4:1-6; *Sprague*, 113 R.I. at 357, 322 A.2d at 39-40. As such, the evidence regarding the speed of Appellant’s vehicle was properly admitted. *See id.* This Panel will not disturb the Trial Magistrate’s

credibility determinations or his assessment of the weight of the evidence in this case. *Link*, 633 A.2d at 1348. Accordingly, based on a review of the record, this Panel is satisfied that the Trial Magistrate did not abuse his discretion, and that his decision to sustain the charged violation is “supported by legally competent evidence.” *Id.* (citing *Envtl. Scientific Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)).

IV

Conclusion

This Panel has reviewed the entire record before it. Having done so, the members of this Panel are satisfied that the Trial Magistrate's decision was neither affected by error of law nor clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. The substantial rights of the Appellant have not been prejudiced. Accordingly, Appellant's appeal is denied, and the charged violation is sustained.

ENTERED:

Chief Magistrate Domenic A. DiSandro, III (Chair)

Judge Lillian M. Almeida

Magistrate William T. Noonan

DATE: _____